IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 33648 of 2006(E)

CC.177/2005 of J.M.F.C.,MAVELIKKARA

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PETITIONER:

GOPALAKRISHNAN, KALAKKATHU HOUSE,
OLAKETTIYAMMBALAM.P.O,
MAVELIKKARA.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS:

M/S.RAMCO AGENCIES, REPRESENTED BY ITS PROPRIETOR
T.K.BALAKRISHNA KURUP, THAZHAVANA KRISHNA KURUP,
PUTHENKOTTAKKAKKAM, CHENNITHALA,
MAVELIKKARA.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.33648 OF 2006

Dated this the 18th day of December, 2006.

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The complainant has filed a proof affidavit. When the matter came up for hearing, the accused was present and on behalf of the accused, the junior counsel has done the cross examination. It is said that the senior counsel had only wanted the junior counsel to get the matter adjourned for one day or to take up the matter after lunch for cross examination. But since that prayer was not granted, the junior counsel was constrained to put some questions. The senior counsel obviously feels that the necessary questions have not been put to the complainant. The petitioner then filed an application to recall the complainant under Section 311 Cr.P.C. That petition was dismissed by the learned Magistrate. A copy of the order is not produced. But however, the order is extracted in the Writ Petition.

2. The short request of the learned counsel for the petitioner is that the accused may be given one more opportunity to cross examine the complainant. The matter is at the stage of defence evidence.

3. I am satisfied, that this Writ Petition can be disposed of without waiting for issue and return of notice to the respondent/complainant. The petitioner is obviously asking for the luxury of a further opportunity to cross examine the complainant and I am satisfied that on appropriate terms, the said request can be allowed and quietus can be achieved.

4. This Writ Petition is, in these circumstances, allowed. It is directed that at the defence stage, the learned Magistrate shall grant the petitioner/accused an opportunity to further cross examine the complainant on condition that the petitioner pays an amount of Rs.250/- (Rupees Two hundred fifty only) as cost to the complainant. The complainant shall be examined on the next date of posting if he is available, and if not, on the next date of posting. The petitioner shall not be entitled to ask for any further adjournment for such cross examination.

5. Hand over a copy of this order to the learned counsel for the petitioner, who shall produce the same before the learned Magistrate

R.BASANT
JUDGE

rtr/